

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SOUTH BAY SAILING CENTER, INC.

: 15 -CV-06183

Plaintiff,

: United States Courthouse  
Central Islip, New York

-against-

THE STANDARD FIRE INSURANCE  
COMPANY, and DAVID R. WOZNICK,

: September 14, 2016  
2:00 p.m.

Defendants.

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TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE STEVEN I. LOCKE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

WILLIAM D. WEXLER, ESQ.  
816 Deer Park Avenue  
North Babylon, NY 11703

For the Defendant  
Woznick:

NICOLINI, PARADISE, FERRETTI &  
SABELLA  
114 Old Country Road  
Mineola, NY 11501  
By: JOHN NICOLINI, ESQ.

Court Reporter:

OWEN WICKER, RPR  
100 Federal Plaza - Suite 1180  
Central Islip, New York 11722  
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Proceedings recorded by mechanical stenography;  
transcript produced by computer aided transcription

1 (Case called)

2 MR. WEXLER: William Wexler on behalf of South  
3 Bay Sailing Center, Judge.

4 THE COURT: Good afternoon.

5 MR. NICOLINI: Good afternoon, John Nicolini,  
6 Nicolini, Paradise, Ferretti & Sabella, 114 Old Country  
7 Road, Mineola, NY on behalf of Mr. Woznick.

8 THE COURT: Who is your client?

9 MR. WEXLER: This is Jim Koehler, president of  
10 South Bay Sailing. He's the president of my client.

11 THE COURT: I didn't know that. Welcome.  
12 That's fine.

13 MR. WEXLER: I'm sorry, as an interested  
14 witness, he will be testifying.

15 THE COURT: But he's still your client.

16 MR. WEXLER: Yes.

17 THE COURT: A bit of housekeeping. I notice  
18 there are outstanding motions, docket entry 22, an  
19 outstanding motion, which was actually resolved by another  
20 docket entry which was a request for status conference.  
21 Another is docket entry 27, a motion for an extension of  
22 time to answer by the defendant and that really seeks to  
23 interpose the defendant for improper service which is why  
24 we're here today. I don't know if there is any objection,  
25 but if it is no objection in granting that motion, I'll do

**Openings - Nicolini**

3

1 it now, unless you want to be heard, Mr. Wexler.

2 MR. WEXLER: I'm sorry?

3 THE COURT: The extension of time with respect  
4 to the defense.

5 MR. WEXLER: No.

6 THE COURT: Docket entry 27 is granted.

7 We're here for a traverse hearing. Let's get  
8 started. Do you want to make opening statements, or no?

9 MR. NICOLINI: Certainly, your Honor.

10 On behalf of the defendant David Woznick, in a  
11 nutshell, your Honor, the service issue is as follows.  
12 Mr. Woznick grew up in a home currently still owned by his  
13 mother Mary Jane Woznick. That property is located at 269  
14 Crombie Street in Huntington Station, New York.

15 David Woznick moved out of that property in  
16 1986. He then resided for approximately eight years in  
17 another home owned by Mary Jane which is 5 Bay Road in  
18 Amity Harbor, New York, and in 1994 he purchased a home at  
19 16 Albert Road in Amity Harbor along with his wife  
20 Dorothy. They jointly owned and they resided at 16 Albert  
21 Road since 1994 and up until the present time. He no has  
22 any connection with 269 Crombie.

23 THE COURT: This is since 1994?

24 MR. NICOLINI: Since 1994, your Honor.

25 And Mr. Woznick will testify that since within a

**Openings - Nicolini**

4

1 few years of 1986 moving out of his childhood home he had  
2 everything transferred, including DMV, voting, anything  
3 else, and I don't think this will be an issue, your Honor.  
4 Everything is on line, all of his license, any license,  
5 etcetera, your Honor.

6 What happened in this case that the lawsuit was  
7 instituted, and on December 8th of 2015, service was made  
8 at his childhood home at 269 Crombie Street. I don't  
9 believe this will be an issue either.

10 I have Mary Jane Woznick prepared to testify as  
11 to receiving papers and any conversations had with the  
12 process server. So I don't think it will be disputed that  
13 the service was effectuated at 269 Crombie Street on  
14 December 8th of 2015.

15 I don't anticipate that will be established that  
16 is not the legal residence of Mr. Woznick but that is the  
17 issue, whether service at that location was proper and I  
18 am prepared on behalf of Mrs. Woznick to produce  
19 Mr. Woznick to testify to that effect. My intention is to  
20 then, I don't know if I say formally rest your Honor, but  
21 not present any further evidence.

22 I presume Mr. Wexler based upon my conversations  
23 will then produce the process server and I would like the  
24 right your Honor to bring in rebuttal witnesses, if  
25 necessary, namely Mary Jane concerning any conversations

**Openings - Nicolini**

5

1 made with the service and Dorothy, the wife, if there is  
2 any claim that service was attempted at the spousal home  
3 in Amity Harbor. Unless your Honor would prefer to have  
4 my witnesses go first.

5 THE COURT: Let's see what Mr. Wexler has to say  
6 about this, how it will affect efficiency.

7 MR. WEXLER: Judge, I guess it could go either  
8 way. I imagine my experience with various hearings would  
9 be, is Mr. Nicolini would call whomever he believes has  
10 not been served or service was not proper. I would then  
11 have the burden to put forward the process server and I  
12 guess the defendant would call rebuttal witnesses if they  
13 were really rebuttal witnesses.

14 THE COURT: Ordinarily I don't like to go this  
15 way but in this instance I understand why it makes sense  
16 only because to some degree he was not asked to put it in  
17 and you just want to make one argument in the hearing. So  
18 if you no objection I'll let him proceed that way and if  
19 you do object you can do it the long way around.

20 MR. WEXLER: I don't have an objection, Judge.

21 THE COURT: Why don't you do it the way you  
22 propose, Mr. Nicolini.

23 MR. WEXLER: On this issue.

24 THE COURT: On this one issue. Okay.

25 MR. NICOLINI: Your Honor, David Woznick is

Openings - Wexler

1 outside and the other two witnesses. Is it okay if I go <sup>6</sup>  
2 out and get them?

3 THE COURT: Before we get started, why don't you  
4 have a seat at counsel table. As you were walking down  
5 the courtroom, I did not ask Mr. Wexler to give his  
6 opening statement.

7 MR. WEXLER: In less than a minute. In less  
8 than a minute. Much of this is not in debate, what  
9 Mr. Nicolini said was correct. However, you'll hear from  
10 our process server that went to an address in Huntington  
11 Station, knocked on the door, a woman identified herself  
12 as Mrs. Woznick who was asked if David Woznick lives  
13 there, she said yes. Is he in the military? No. And he  
14 served the process on her and then gives the description  
15 as required by 306 of the CPLR and if somebody who accepts  
16 service says he lives here and answers the relevant  
17 questions with respect to the military, I don't know how  
18 later on he says no, he doesn't live there.

19 THE COURT: I understand why it's a close call  
20 because it's the mother in this case. What if there was  
21 somebody who has no relationship to him?

22 MR. WEXLER: That's a separate issue. If  
23 somebody just said yes, he lived here and he had no  
24 apparent authority or wasn't a familial relationship --

25 THE COURT: Mrs. Woznick?

Openings - Wexler

1 MR. WEXLER: Yes, the answer by Ms. Woznick. If<sup>7</sup>  
2 you want to think about it that way, then you can get so  
3 crafty to make sure you never got service. He doesn't  
4 live here. Now what do you do?

5 THE COURT: I understand what you are saying.  
6 The facts are in dispute, but let's go.

7 MR. WEXLER: Thank you.

8 THE COURT: Did I cut you off?

9 MR. WEXLER: No, you didn't, but thank you.

10 THE COURT: Mr. Nicolini.

11 MR. NICOLINI: Defense calls David Woznick.

12 THE CLERK: Raise your right hand.

13 **D A V I D W O Z N I C K,**

14 called as a witness, having been first  
15 duly sworn, was examined and testified  
16 as follows:

17 THE CLERK: Please state your name and spell it  
18 slowly.

19 THE WITNESS: David Woznick, W-O-Z-N-I-C-K.

20 THE COURT: Please have a seat.

21 I'll ask you to pull the microphone toward you  
22 and make sure the light is on because the acoustics here  
23 are terrible.

24 THE WITNESS: Okay.

25 THE COURT: Is the light on?

**D. Woznick - Direct/Nicolini**

8

1 THE WITNESS: Yes.

2 THE COURT: Pull it towards you.

3 THE WITNESS: Thank you.

4 THE COURT: Okay. Mr. Nicolini.

5 MR. NICOLINI: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. NICOLINI:

8 Q Good afternoon, Mr. Woznick. I would like you to  
9 focus on 269 Crombie Street in Huntington Station, New  
10 York. Are you familiar with that address?

11 A Yes.

12 Q What is your connection with that address?

13 A We -- I lived there since 1965. My parents bought  
14 that. And I was there until about '86 when my mother  
15 converted our bedroom into an apartment for my sister.

16 Q Have you resided at 269 Crombie Street since  
17 approximately 1986?

18 A No.

19 Q Your mother's first name is Mary Jane?

20 A Yes.

21 Q Last name Woznick?

22 A Yes.

23 Q Does your mom still reside at that property?

24 A Yes.

25 Q Is she still the owner of that property.



D. Woznick - Direct/Nicolini

9

1 A Yes.

2 Q Does she reside there alone or with anyone else?

3 A Until my father passed away, that was it.

4 Q When did your dad pass?

5 A Last year.

6 Q 2015 or '14?

7 A Yeah, '15, I guess.

8 Q So let's talk about then in 1986 -- withdrawn. Up  
9 until that point, 269 Crombie, were you driving when you  
10 left?

11 Did you have your driver's license?

12 A Yes.

13 Q Okay. I assume your driver's licenses listed 269  
14 Crombie at that point; is that correct?

15 A Yes.

16 Q When you left in 1986, where did you move?

17 A My parents were from Amityville, 5 Kay Road, and me,  
18 my brother and sister moved there while my while they were  
19 converting an addition to an apartment.

20 Q Okay. Did you live at 5 Kay Road for a period of  
21 road for a period of time?

22 A Until I got married in '94.

23 Q And you got married to Dorothy?

24 A Yes.

25 Q Did you and Dorothy purchase a home together at some

**D. Woznick - Direct/Nicolini**

10

1 point?

2 A Yes, in '94.

3 Q The address for the home you purchased in 1994 is  
4 what?

5 A 16 Albert Road, Amity Harbor.

6 Q Is it fair to say then that you lived from -- let me  
7 ask you this. From 1986 through 1994 where did you live?

8 A At 5 Kay Road.

9 Q During that eight-year period, did you transfer any  
10 of your records over to 5 Kay?

11 A Yes, they did.

12 Q Which would have been what?

13 A Licenses, subscriptions, all of that.

14 Q All right. The purchase in '94 to Albert Road, and  
15 you resided continually with your wife Dorothy at 16  
16 Albert Road since 1994?

17 A Yes.

18 Q What was your address for purposes of mail,  
19 forwarding, registration for vehicles, boats?

20 A Everything.

21 Q Driver's license?

22 A Yes, at Albert Road.

23 Q Since approximately when?

24 A '94.

25 Q Okay. All right. And other than the fact that your

**D. Woznick - Cross/Wexler**

11

1 mother continued to reside at 269 Crombie Street, do you  
2 have any other connection to that property?

3 A No.

4 Q Do you have any ownership interest in that property?

5 A No.

6 MR. NICOLINI: I have no further questions.

7 Thank you.

8 CROSS-EXAMINATION

9 BY MR. WEXLER:

10 Q Good afternoon, Mr. Woznick.

11 You testified that you lived and still live at  
12 16 Albert Road in Amity Harbor?

13 A Yes, sir.

14 Q And let's talk about Amity Harbor. That is south of  
15 Montauk Highway, correct?

16 A Correct.

17 Q And you lived there for how many years? Fifteen,  
18 twenty years?

19 A Eight.

20 Q And before that you were in Amityville on 5 Kay?

21 A Yes.

22 Q That was your brother's house?

23 A No.

24 Q Okay. And where were you storing the boat in 2012?

25 A At 5 Kay Road.

**D. Woznick - Cross/Wexler**

12

1 Q Who owns 5 Kay Road?

2 A My mother.

3 Q Your mother owns 5 Kay Road and you were storing your  
4 boat there?

5 A Yes.

6 Q Now your boat is the subject of this underlying  
7 litigation, correct?

8 A Uh-huh.

9 Q Yes?

10 A Yes, sir.

11 Q And your boat floated up onto my client's property?

12 A Yes, sir.

13 Q And my client is South Bay Sailing Center, correct?

14 A Yes.

15 Q At some point in time you went to -- your boat was a  
16 33-foot Carver?

17 A No.

18 Q Tell me the size and the make of your vessel?

19 A I believe it was 28-foot Bayliner.

20 Q Okay. Inboard or inboard/outboard?

21 A IO, inboard/outboard.

22 Q At some point in time you went over to the South  
23 Shore Sailing Center, correct?

24 A After I was notified.

25 Q I just asked you, did you?

**D. Woznick - Cross/Wexler**

13

1 A Yes, I did.

2 Q And you went over there because you were probably  
3 going to inquire about your boat, correct?

4 A Yes, sir.

5 Q And in fact your boat was not only on the property,  
6 it was into the South Shore Sailing Center's boat,  
7 correct?

8 A It bumped into the boat. Knocked the boat off the  
9 tracks.

10 Q We are talking about the hanger door?

11 A The sliding closet door, 20 feet, like that.

12 Q Larger than this courtroom?

13 A Yes.

14 Q Didn't want to leave the impression like it was a  
15 door like here?

16 A Yes.

17 Q On at least two occasions you talked to Jim Koehler?

18 A Yes.

19 Q You know who he is?

20 A Yes.

21 Q He's the gentleman with the blue blazer?

22 A Yes.

23 Q How did you know him?

24 A From this incident.

25 Q And on at least two occasions, it may have been

**D. Woznick - Cross/Wexler**

14

1 three, you discussed various aspects of your boat and  
2 Superstorm Sandy with Jim Koehler, correct?

3 A Yes.

4 Q Now, your mother resides at 269 Crombie Street in  
5 Huntington Station, correct?

6 A Yes, sir.

7 Q And your mother is approximately 70 years old?

8 A 85.

9 Q Eighty-five, okay. And is she between five-foot and  
10 five-foot three?

11 A Yes, sir.

12 Q And Caucasian?

13 White?

14 A Yes, sir.

15 Q And hair color, gray?

16 A Gray, brown, whatever.

17 Q At some point in time -- do you speak to your mother  
18 regularly?

19 A About once a week.

20 Q Okay. And were you speaking to your mother regularly  
21 over the last year or two?

22 A Yes, sir.

23 Q And when was the first time your mother told you that  
24 she received some sort of legal papers on your behalf.

25 When was the first time?

**D. Woznick - Cross/Wexler**

15

1 A When I -- when she mailed me the letter saying that  
2 we were in default or something, whatever, the last letter  
3 that was sent. We didn't respond to the summons.

4 Q Okay. So your mother sent you a copy of a letter  
5 presumably sent by a lawyer saying that you didn't respond  
6 to a complaint?

7 A Yes.

8 Q Okay. And did your mother mail it to you or did she  
9 hand it to you?

10 A Mailed it to me.

11 Q Did she call you first?

12 A The day before.

13 Q Did she tell you she was served with papers before  
14 that? Just yes or no.

15 A Not at that time.

16 Q Well, did she tell you afterwards?

17 A My sister had been at the house and said what are  
18 these papers, after which it was served months later, and  
19 that's when I find found out about that.

20 Q Let's go back to Superstorm Sandy. What date did  
21 that occur?

22 A Halloween of 2012.

23 Q Okay. And Amityville and Amity Harbor, especially  
24 the homes right on the canal, was probably one of the  
25 worst hit on Long Island, correct?

**D. Woznick - Cross/Wexler**

16

1 A Yes.

2 Q And is it fair to say that probably every house south  
3 of Merrick Road was under water?

4 A Yes.

5 Q And in fact the streets that are Barry and Kay Road  
6 and DeSotto, all of those streets were under water?

7 A Yes.

8 Q In fact homes and businesses north of Merrick were  
9 under water?

10 A Some, yes.

11 Q And your home was under water, wasn't it?

12 A Yes.

13 Q Your home was flooded as was your neighbor's and the  
14 people across the street?

15 A Yes.

16 Q In fact are you aware that in Amity Harbor the homes  
17 south of Merrick had between five and eight feet of water  
18 of water, of flooding?

19 A Oh, yes.

20 Q And that was your house?

21 A Yes.

22 Q And you moved out of your house, didn't you?

23 A Yes.

24 Q You weren't going to live in it while it was flooded?

25 A Yes.



**D. Woznick - Cross/Wexler**

17

1 Q And you had to have major renovation and  
2 construction?

3 A Yes.

4 Q And in fact did you have your house lifted?

5 A Not yet.

6 Q You still have to have the house lifted?

7 A Yes.

8 Q And you had to do that because they destroyed the  
9 interior of it?

10 A Yes.

11 Q There was mold?

12 A We cleaned it before the mold came.

13 Q Okay. But you had at least five feet of water in  
14 your home, yes?

15 A At 5 Kay it did. My house had about a foot.

16 Q So there was a time that you moved out of your house.  
17 You couldn't live in there with a foot of saltwater in the  
18 house, correct?

19 A I was in the house the whole time. I stayed.

20 Q You never moved out?

21 A No.

22 Q And lived without electricity all winter?

23 A I had an electrician temporarily hook up my electric.  
24 Put in a new electric box.

25 Q Do you have any receipts of that here?

**D. Woznick - Cross/Wexler**

18

1 A No.

2 Q Well, you also said -- strike that. So everybody  
3 else in the house moved out?

4 A Just me and my wife.

5 Q Did she move out?

6 A No.

7 Q So you stayed. You are saying you stayed there?

8 A Yes.

9 Q Okay. What do you recall discussing with Jim Koehler  
10 when you went to see him on the two, potentially three  
11 occasions? What is it that you recall discussing with  
12 him?

13 A Having it removed.

14 Q Anything else?

15 A Not that I recall.

16 Q Okay.

17 THE COURT: Meaning the boat. You said "having  
18 it removed"?

19 THE WITNESS: Having the boat removed from the  
20 property.

21 Q And did you ever discuss with or tell Mr. Koehler  
22 that you were moving certain items of yours to Huntington  
23 Station?

24 A No.

25 Q And by the way, 269 Crombie is in Huntington Station,

**D. Woznick - Redirect/Nicolini**

19

1 correct?

2 A Yes.

3 Q And do you have any knowledge whether or not  
4 Mr. Koehler knows your mother?

5 A I don't believe so.

6 Q And you don't have any understanding that Mr. Koehler  
7 knows that your mother resides in Huntington Station?

8 A I don't believe so.

9 MR. WEXLER: Thank you, sir. No further  
10 questions.

11 THE COURT: Redirect examination.

12 MR. NICOLINI: Briefly, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. NICOLINI:

15 MR. NICOLINI: Judge, may I have this marked for  
16 identification.

17 THE COURT: Sure. Show it to Mr. Wexler.

18 MR. NICOLINI: May I approach?

19 THE COURT: First, Mr. Wexler, any objection?

20 MR. WEXLER: I do have an array of objections,  
21 but I'll let Mr. Nicolini first offer them and I'll make  
22 the appropriate objection.

23 THE COURT: All right. Have them marked first.

24 MR. NICOLINI: With the Court's permission, your  
25 Honor.

**D. Woznick - Redirect/Nicolini**

20

1 THE COURT: Yes.

2 Q Mr. Woznick, look at what is marked as Defendant's  
3 Exhibit 2 for identification, and just look at that and is  
4 that a copy of your boat registration for the boat at  
5 issue?

6 A Yes, sir.

7 Q And that boat, based upon that registration, I think  
8 is a '76 Bayliner?

9 A '76 Bayliner.

10 Q Does it also have your car registration on there as  
11 well?

12 A Yes.

13 Q What is the date of the car registration?

14 A April 22, 2013.

15 Q And is -- what was the address for the car when you  
16 registered on that date?

17 A 16 Albert Road.

18 Q Which is where you live with your wife, correct?

19 A Yes.

20 Q Does the boat registration, what is the boat  
21 registration?

22 A 15 Albert Road.

23 Q What is the date of the registration for the boat?

24 A January of 2013.

25 MR. WEXLER: Judge, I don't mean to interrupt.

**D. Woznick - Redirect/Nicolini**

21

1 I move to strike that. He's reading from something not  
2 received in evidence.

3 MR. NICOLINI: I'll offer it in evidence.

4 MR. WEXLER: And I'll object.

5 THE COURT: On the basis of what?

6 MR. WEXLER: I don't know it is. First of all  
7 there was a police report.

8 THE COURT: He said it was a registration for a  
9 boat.

10 MR. NICOLINI: No, the registration for the boat  
11 and car.

12 THE COURT: Exhibit 2?

13 MR. NICOLINI: Yes.

14 MR. WEXLER: I've seen it but my objection is,  
15 first of all, that the two documents that are DMV and boat  
16 registration and the car registration, those are  
17 registered to the Department of Motor Vehicles. I don't  
18 know if he can testify that those are business records of  
19 the Department of Motor Vehicles. I don't think he has  
20 the capacity to do that. And to skip ahead, the police  
21 report --

22 THE COURT: Well, let's get to the police  
23 report. May I see the two exhibits, please?

24 Mr. Woznick, you testified these are copies of  
25 your car registration and boat registration; is that

**D. Woznick - Redirect/Nicolini**

22

1 correct.

2 THE WITNESS: Yes, sir.

3 THE COURT: And did you provide the information  
4 to the Department of Motor Vehicles for your address?

5 THE WITNESS: I do have a driver's license.

6 THE COURT: I'm just asking, did you provide  
7 this information?

8 THE WITNESS: Yes.

9 THE COURT: And this is what you got back, your  
10 registration for the car and boat.

11 THE WITNESS: I have a police report.

12 THE COURT: No, is this what you got back from  
13 the Department of Motor Vehicles?

14 THE WITNESS: Yes.

15 BY MR. NICOLINI:

16 Q Mr. Woznick, look briefly at Defendant's Exhibit 3  
17 and I'll just ask you -- just looking at that, does that  
18 look to you to be the information from the Department of  
19 Motor Vehicles pertaining to your driver's license?

20 A Yes.

21 Q Do you have a copy of your driver's license that you  
22 brought with you today?

23 A Yes.

24 Q And the driver's license that you currently have with  
25 the Department of Motor Vehicles, what is the address on

**D. Woznick - Redirect/Nicolini**

23

1     that license?

2     A     16 Albert Road.

3     Q     It's been there for how long as DMV had the 16 Albert  
4     Road address?

5     A     Since '94, '95.

6                 MR. NICOLINI: I would offer Exhibit 2.

7                 THE COURT: That is 3.

8                 MR. NICOLINI: I'm sorry.

9                 THE COURT: I don't understand what that is.

10                May I see that, please?

11                Mr. Woznick, what is this.

12                THE WITNESS: I think he inquired to Motor  
13     Vehicles of what my driver's license was and when it  
14     expires and stuff.

15                THE COURT: Well, you testified to what you  
16     said.

17                Do you have objections, Defendant's 3?

18                MR. WEXLER: You already overruled the  
19     objection.

20                THE COURT: No, to Defendant's 2.

21                MR. WEXLER: I don't know what it is. It is an  
22     abstract.

23                THE COURT: Neither do I.

24                MR. NICOLINI: The DMV abstract that shows 16  
25     Albert Road the address per the DMV record. I also have a

**D. Woznick - Redirect/Nicolini**

24

1 copy of his license.

2 THE COURT: You have to ask him how he got this.  
3 You may have printed this out.

4 MR. NICOLINI: I did, your Honor. I did it off  
5 the internet.

6 THE COURT: Sustained. He can't testify to what  
7 this is.

8 MR. NICOLINI: I don't think this is even an  
9 issue, but to the extent it is I have a copy of his  
10 driver's copy.

11 THE COURT: If you can make it an exhibit, but  
12 you should have done this for everybody beforehand so we  
13 know what you are doing.

14 MR. NICOLINI: I apologize, your Honor.

15 THE COURT: Just so the record is clear, the  
16 distinction of my ruling, when he had the registration for  
17 the two vehicles, those are business records clearly what  
18 he purports what they are. I don't know what Exhibit 3  
19 was.

20 MR. NICOLINI: May I have step outside to make a  
21 copy?

22 MR. WEXLER: I don't need a copy, Judge. I'll  
23 stipulate if counsel states that is his driver's license,  
24 I'm fine.

25 THE COURT: All right. If you want to put it in



**D. Woznick - Redirect/Nicolini**

25

1 evidence, either the license or a copy.

2 MR. WEXLER: I'll also stipulate to replace the  
3 original with a copy so the man can have his license back.

4 THE COURT: Let's make a copy.

5 MR. NICOLINI: Judge, let's make this  
6 Defendant's 4, your Honor.

7 THE COURT: Okay.

8 Q Mr. Woznick, I'll show you what has been marked as  
9 Defendant's Exhibit 4. Can you tell us what that is?

10 A A copy of my driver's license.

11 Q And the address is listed as what?

12 A 16 Albert Road.

13 MR. NICOLINI: I would offer that in evidence,  
14 your Honor.

15 THE COURT: Any objection.

16 MR. WEXLER: No objection.

17 THE COURT: Admitted.

18 (Whereupon, Defendant's Exhibit 4 was received  
19 in evidence.)

20 Q You were asked, Mr. Woznick, questions by Mr. Wexler  
21 about complications with Mr. Koehler. Do you recall that?

22 A Yes.

23 Q And at some point did the Amityville police become  
24 involved?

25 A Yes.

**D. Woznick - Redirect/Nicolini**

26

1 Q Did you speak to the responding police officer?

2 A Yes.

3 Q Was a police report filed, to your knowledge?

4 A Yes.

5 Q And have you looked at the police report?

6 A I have copies of it.

7 Q And does the police report contain your address?

8 A Yes, it does.

9 Q What do you recall the police report sets forth your  
10 address as of the time it was made?

11 A 16 Albert Road.

12 Q And I would show you what is marked as Defendant's  
13 Exhibit 1. I would just ask you if you can identify what  
14 that is?

15 A A copy of the police report.

16 Q Do you have a copy of the date of the police report  
17 here? What is that?

18 A 11/27 of 2012.

19 Q Does that comport with your recollection of about  
20 when the police became involved and when they filed the  
21 report?

22 A Yes, sir.

23 Q That report does in fact list your address as 16  
24 Albert?

25 A Yes.

**D. Woznick - Recross/Wexler**

27

1 Q Did you provide that from the police? Did they get  
2 it from the registration?

3 A They got it from the registration.

4 Q Did you ever provide to Mr. Koehler or the employees  
5 or anyone else any different address than the one that is  
6 contained in the police report?

7 A No, sir.

8 MR. NICOLINI: I would offer at this time, your  
9 Honor, Defendant's Exhibit 1 into evidence.

10 MR. WEXLER: Objection, your Honor.

11 THE COURT: On the grounds of?

12 MR. WEXLER: It's a business record. I don't  
13 think he can lay a foundation to offer a record that he  
14 did not keep, maintain or prepare.

15 THE COURT: I agree. Sustained.

16 MR. NICOLINI: Okay.

17 I have no further questions. Thank you.

18 THE COURT: Recross.

19 MR. WEXLER: A few other questions.

20 RE CROSS-EXAMINATION

21 BY MR. WEXLER:

22 Q Mr. Woznick, incidentally, your testimony is that you  
23 stayed in the house at 16 Albert?

24 A Yes.

25 Q After at least a foot of water was in the house,

**D. Woznick - Recross/Wexler**

28

1 correct?

2 A Yes.

3 Q And your mechanicals, your boiler, heater, those were  
4 on the ground floor, not the second floor, correct?

5 A In the basement.

6 Q If the first floor was flooded then the basement was  
7 flooded?

8 A My floors in the house didn't get wet on the living  
9 portion but the basement had it up to the floor beams.

10 Q Your basement is about seven feet in height?

11 A Yes.

12 Q So the boilers and all the mechanicals that heat the  
13 house and anything that had to do with heating the house,  
14 they were all under saltwater?

15 A Yes.

16 Q So there was at least seven feet of saltwater in the  
17 basement?

18 A Yes.

19 Q When did you first purchase the '76 Bayliner, the  
20 vessel in question?

21 A In the '80s.

22 Q So when you purchased the vessel in the '80s --

23 A I didn't purchase it. My sister gave it to me.

24 Q However you came in possession of the 27-foot 1976  
25 Bayliner, however it was gifted, sold, whatever, in the

**D. Woznick - Recross/Wexler**

29

1 mid '80s, you registered it in the house that you lived in  
2 at the time, correct?

3 A Yes.

4 Q And that was 16 Albert?

5 A Yes.

6 Q So that registration and that address was in the New  
7 York State Department of Motor Vehicles of 16 Albert  
8 existed since the '80s?

9 A Yes.

10 Q And certainly before Hurricane or Superstorm Sandy?

11 A Yes.

12 Q And the same thing. When did you purchase your car?

13 A The car?

14 Q Yes.

15 A Probably 2000, 2002, 2003, something like that.

16 Q Once again you purchased that car, you registered it  
17 prior to Superstorm Sandy?

18 A Yes.

19 Q You registered it to the home at 16 Albert?

20 A Yes.

21 Q Now you brought in some documents that -- the  
22 Department of Motor Vehicles registration and the vessel  
23 registration and these things that you admitted were  
24 registered prior to Superstorm Sandy?

25 A Yes.

**D. Woznick - Recross/Wexler**

30

1 Q October 28th of 2012.

2 A Yes.

3 Q Now, did you bring any bills --

4 A Yes, I have a bunch of bills, tax bills, utility  
5 bills. My wife has them in the briefcase.

6 Q Let me back up. So your testimony is that there is a  
7 foot of water in the house?

8 A Yes, sir.

9 Q And saltwater?

10 A Yes, sir.

11 Q And when was the house built, approximately?

12 A 1929.

13 Q Okay. So you have, as you said seven feet of water  
14 when the storm first occurred in your basement?

15 A Yes, sir.

16 Q And you are saying at no time did you ever move out  
17 of the house?

18 A No.

19 MR. WEXLER: Okay.

20 THE WITNESS: Well --

21 THE COURT: You answered the question. That's  
22 fine.

23 THE WITNESS: Okay.

24 THE COURT: You may step down.

25 According to what we discussed before,

Miller - Direct/Wexler

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1 Mr. Wexler will put on his case.

2 MR. WEXLER: Sure. I guess the answer is yes.

3 At this time, your Honor, the plaintiff would  
4 call Kevin Miller.

5 K E V I N M I L L E R,

6 called as a witness, having been first  
7 duly sworn, was examined and testified  
8 as follows:

9 THE WITNESS: May name is Kevin Miller,  
10 M-i-l-l-e-r.

11 THE COURT: Go ahead.

12 MR. WEXLER: May I, Judge.

13 THE COURT: Yes, please.

14 DIRECT EXAMINATION

15 BY MR. WEXLER:

16 Q Mr. Miller, by whom are you employed?

17 A Intercounty Judicial Services.

18 Q What is Intercounty Judicial Services?

19 A It's a business that performs process serving.

20 Q And how long have you been employed?

21 A Since May 1988.

22 Q And since May of 1988, you've been employed as what?

23 A A process server.

24 Q Okay. And was that continuous from 1988 until today?

25 A Yes.

Miller - Direct/Wexler

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1 Q And can you tell us in about a sentence or two what  
2 you did or what you did all those years as a process  
3 server for Intercounty Judicial Services?

4 A I served various forms of process, summonses,  
5 subpoenas, etcetera.

6 Q Okay. And can you tell us approximately how many  
7 summonses or subpoenas you have served since 1988? If you  
8 need to break it down by year, month, whatever?

9 A I average between 75 and 100 a week.

10 Q Okay. And how many weeks a year -- what is your  
11 custom and habit of working?

12 A I work every week.

13 Q You must take some vacation.

14 A No, I don't.

15 MR. WEXLER: Okay. A dedicated employee.

16 Q So if my math is right, and correct me, that's about  
17 5,000 services of process per year?

18 A If that's the math.

19 MR. WEXLER: Okay. I'll let the Court take  
20 judicial notice of 5,000 times 28 years. I can't at this  
21 juncture.

22 Q Do you have a custom and habit that you employed when  
23 you serve process?

24 A Yes.

25 Q Tell us about that?



Miller - Direct/Wexler

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1 A When I got a document to serve, I go to the address  
2 that is provided and when I get to the address I ask for  
3 the defendant or respondent or whomever the process is  
4 directed to and I ask for them.

5 Q Okay. Now, let me draw your attention to  
6 December 8th, 2015 at 6:25 p.m.

7 MR. WEXLER: Judge, I would like to have these  
8 documents marked as Plaintiff's Exhibit 1 and two.

9 THE COURT: Show them to counsel.

10 MR. WEXLER: One is a copy of the affidavit of  
11 service and two is a summons and complaint in this action.

12 THE COURT: Okay.

13 Any objections?

14 MR. NICOLINI: No, your Honor.

15 (Whereupon, Plaintiff Exhibit 1 and 2 received  
16 in evidence.)

17 THE COURT: Plaintiffs 1 and 2 in evidence.

18 Q Mr. Miller, I will show you what is marked as 1 and  
19 2. First, tell us what Plaintiff's Exhibit 1 in evidence  
20 is?

21 A A copy of my affidavit of service.

22 Q Okay. And the affidavit of service is on what  
23 matter?

24 A The matter before the Court today.

25 Q Okay. And can you read the matter on the affidavit

Miller - Direct/Wexler

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1 of service, Plaintiff's Exhibit 1?

2 A South Bay Sailing Center against Standard Fire  
3 Insurance and David Woznick.

4 Q And can you tell us what Plaintiff's Exhibit number 2  
5 is in evidence?

6 A A copy of the complaint that was served.

7 Q Okay. And let me just ask, if you look at  
8 Plaintiff's Exhibit 1, is there an index number located on  
9 the top right-hand corner of the document?

10 A Yes, CV-15-6183.

11 Q And if you will look at -- it may not be on your  
12 copy.

13 A Oh, yes, it is.

14 Look at Plaintiff's Exhibit 2 in evidence, the  
15 summons and complaint, and see if there is an index  
16 number?

17 A Yes.

18 Q What is the index number on the complaint?

19 A CV-15-6183.

20 Q What is the caption on the summons and complaint?

21 A South Bay Sailing Center against Standard Fire  
22 Insurance and David Woznick.

23 Q Let me direct your attention to December 8, 2015, at  
24 6:25 p.m. did you have the occasion to be at 269 Crombie  
25 Street, Huntington Station, New York?

Miller - Direct/Wexler

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1 A Yes.

2 Q Why did you go to that location?

3 A To serve a summons on David Woznick.

4 Q And when you arrived at the location, 269 Crombie  
5 Street, can you tell us what you did, sir?

6 A I went to the address. I went to the door. I spoke  
7 to a woman who identified herself as Mrs. Woznick. I was  
8 told that the defendant wasn't home.

9 THE COURT: That the defendant was not at home.

10 THE WITNESS: Yes, that he lived there and he  
11 wasn't home and wasn't present at the time, and I had a  
12 summons for the defendant David Woznick and I left the  
13 summons with the woman, Mrs. Woznick.

14 Q Let me just back up and, again, you further inquired  
15 if he lived there, he, meaning David Woznick?

16 A Yes.

17 Q What was the response of Mrs. Woznick?

18 A It was in the affirmative.

19 Q And before that, did you ask Mrs. Woznick to identify  
20 herself or did she identify herself to you when you  
21 knocked on the door?

22 A She said she was the defendant's mother.

23 Q Did you know her prior to or met her, to your  
24 knowledge, prior to December 8, 2015?

25 A No.

Miller - Direct/Wexler

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1 Q And when she acknowledged that she was the  
2 defendant's mother and the defendant lived there, what did  
3 she then say?

4 I think you said he was not at home?

5 A Yes, I don't recall the exact conversation, but he  
6 was not present at the time of service.

7 Q And what did you then do?

8 A I left the summons and complaint with the woman,  
9 Mrs. Woznick.

10 Q Okay. And did you also inquire whether or not David  
11 Woznick was a member of the United States Armed Forces or  
12 in the military?

13 A Yes, always.

14 Q And what was Ms. Woznick's response?

15 A No, he was not.

16 Q I will ask you to look at the draft date of service.  
17 At the top after it says the date, December 8, 2015, and  
18 6:25 p.m. and the address and you have box number 3  
19 checked off; is that correct?

20 A Yes.

21 Q And can you first read for us, it's only a sentence  
22 and a half, and then I'll ask you why you checked that box  
23 off?

24 A Suitable age person by delivering thereat a true copy  
25 of each to Mrs. Woznick a person of suitable age and

Miller - Direct/Wexler

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1 discretion and being said premises is subject dwelling  
2 house, usual place of abode within the state.

3 Q There's a check mark on that section that says  
4 dwelling house and in parenthesis, (usual place of abode),  
5 within the state. That was checked off?

6 A Yes.

7 Q And why did you check that box off?

8 A Because that's what I was led to believe.

9 Q Okay. And further down it says address confirmation,  
10 number 5, the box checked off.

11 And can you tell us what was the purpose of  
12 checking off that box?

13 A That was the subsequent mail to complete service, a  
14 mailing. A copy of the summons and complaint was mailed  
15 to the defendant at the address given, 269 Crombie Street,  
16 Huntington Station, New York.

17 Q Once again, box number 6 is checked off and would you  
18 tell us why and what is checked off and what information  
19 is contained in that box?

20 A Yes, it's a description of the person served, a  
21 Mrs. Woznick, a female, white, gray hair, 5 foot, 5'3",  
22 approximately 70 years old, 151 to 200 pounds.

23 Q Military service. Once again, what is the purpose  
24 that you checked that box off?

25 A That was the establishment of nonmilitary service for

Miller - Cross/Nicolini

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1 the defendant.

2 Q And is that your signature on the lower right-hand  
3 side?

4 A Yes.

5 Q And there's a notary of Patricia. You have to help  
6 me.

7 A R-o-t-h-f-r-i-t-z.

8 Q And who is Patricia Rothfritz?

9 A An employee of Intercounty Judicial Services. She  
10 worked at Intercounty an a notary.

11 MR. WEXLER: No further questions.

12 Thank you.

13 THE COURT: Mr. Nicolini.

14 CROSS-EXAMINATION

15 BY MR. NICOLINI:

16 Q Mr. Miller, when did you get the assignment to  
17 effectuate service of the summons and complaint?

18 A Prior to December 8th.

19 Q When was that?

20 A I cannot give the exact date. Within a week.  
21 Usually -- no. Within the week before.

22 Q So you got an assignment and this was one of many.  
23 This particular week, if it was an average week, 75 to  
24 100, correct?

25 A Yes.

Miller - Cross/Nicolini

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1 Q You wound up serving this at 269 Crombie Street. How  
2 did you come up with that address?

3 A The address supplied to us by the attorney, William  
4 Wexler.

5 Q That would be Mr. Wexler who gave you this address?

6 A Yes.

7 Q Now, you have no personal knowledge as to when, if  
8 ever, Mr. Woznick resided at this property?

9 A Excuse me?

10 Q You have no personal knowledge as to when, if ever,  
11 Mr. Woznick resided at this property, do you?

12 A Prior to going there?

13 Q Well, even up until today.

14 A I was told by Mrs. Woznick that he did.

15 Q I will get to that.

16 Do you have personal knowledge other than this  
17 alleged conversation with Mrs. Woznick?

18 A No.

19 Q Would you agree with me there are all databases for  
20 which you could confirm the legal address?

21 A Yes.

22 Q DMV, Google, any number of sources could have  
23 provided you with an address for Mr. Woznick?

24 A Yes.

25 Q Did you look at any sources to determine an address

Miller - Cross/Nicolini

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1 for Mr. Woznick?

2 A No, I did not.

3 Q Now, you received the summons and complaint and you  
4 proceeded to this address?

5 A Yes.

6 Q What have you brought here today other than the  
7 affidavit of service?

8 A Just the copy of the affidavit of service and in  
9 work, what we do is upload it through a GPS system  
10 confined to the New York City rules, and that is how I got  
11 the information generated, uploaded to a third party who  
12 maintain these records separately, in addition to the  
13 information to our office.

14 Q Let's talk about this.

15 The testimony you've given here today in this  
16 hearing, what have you used to refresh your recollection  
17 as to that conversation?

18 A The affidavit of service.

19 Q Okay. And the affidavit of service is a preprinted  
20 form; is that correct?

21 A Absent the information that I put into it.

22 Q Absent the information. Just what you check off  
23 where you believe it is applicable, correct?

24 A I electronically input the data into the computer,  
25 into the application that then sends it to a third party



Miller - Cross/Nicolini

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1 and into the computer at Intercounty, yes.

2 Q Paragraph 3 says suitable aged person.

3 A Yes.

4 Q Then it says by deliver thereat a true copy of each  
5 to, and something has been typed in, Mrs. Woznick,  
6 correct?

7 A Yes.

8 Q All the verbiage in paragraph 3, other than Mrs.  
9 Woznick is a form that is in these affidavits of service,  
10 correct?

11 A Yes.

12 Q So the only information you put into this form  
13 concerning service upon Mr. Woznick, was that you served  
14 Mrs. Woznick and you checked off with an X that this was  
15 at the dwelling house?

16 A Yes.

17 Q So let's get to the service that you made.

18 How many people have you served with any type of  
19 process between December 8th of 2015 and today?

20 It has to be, what, thousands? Correct?

21 A Yeah, sure.

22 Q And when was the first time you thought about this  
23 service after you had effectuated it? A week ago, two  
24 weeks ago?

25 A Yeah, when we got notice that this was down for a

## Miller - Cross/Nicolini

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1 traverse hearing and I would be needed to testify about  
2 service.

3 Q And everything you've testified here is based upon  
4 your personal recollection of this conversation that took  
5 place nine months ago and with thousands of services  
6 taking place in between this and that?

7 A What I'm testifying to is the veracity of my  
8 affidavit of service which was generated at the time of  
9 service.

10 Q But that verbiage that I said, you didn't put  
11 anything in there other than checking off a box you spoke  
12 to Ms. Woznick and then you checked you off this was David  
13 Woznick's usual place of abode?

14 A Yes.

15 Q Can you honestly tell this Court that you recall the  
16 words that were spoken between you and Mrs. Woznick, or  
17 were you just assuming that those were the words that were  
18 spoken because you checked off a box on your affidavit of  
19 service?

20 A I'm not assuming anything.

21 Q Well, sir --

22 A I cannot recall verbatim the conversation  
23 word-for-word.

24 Q Well, do you remember, describe for me the house  
25 where you served Ms. Woznick?

Miller - Cross/Nicolini

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1 A It was a house. Unremarkable. I --

2 Q Sir, with all due respect, do you want to sit there  
3 and say you remember this service and this conversation  
4 given the passage of time and the amount of service you  
5 effectuated in between. Can you say that?

6 A No, I know I did the service.

7 Q I'm not doubting you did the service. Can you  
8 honestly tell this Court that you remember as you sit here  
9 now, this particular service and the conversation you had?

10 A I remember being there. But I cannot recall verbatim  
11 the conversation.

12 Q So let's talk about then you remember being there.

13 Was the conversation, did it happen outside the  
14 home, inside the home, through a door?

15 How did it happen?

16 A At the door.

17 Q At the door. Was the door opened or closed?

18 A The door had to be open.

19 Q When you say the door had to be open, that is what  
20 you are assuming or is it based on your independent  
21 recollection?

22 A That is logic since I described the individual  
23 Ms. Woznick.

24 Q That's not logic. I'm just talking now, and feel  
25 free to tell us if you don't remember.

Miller - Cross/Nicolini

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1 Are you professing to have a recollection as you  
2 sit here now of the conversation that you had, or you are  
3 just assuming you had a certain conversation based upon  
4 what you checked off?

5 A I'm not assuming anything.

6 Q Let's talk about the conversation. What did you say  
7 to Mrs. Woznick and what did she say to you?

8 A I cannot recall verbatim the conversation.

9 Q So you had a conversation.

10 When you say you cannot recall verbatim, can you  
11 remember anything about the conversation?

12 A I know I told Mr. Woznick that I had a summons and  
13 complaint for David Woznick.

14 Q And do you remember saying that to her or you are  
15 assuming you said that?

16 A That's what I always say.

17 Q Now, that's what you always say, but you don't  
18 remember this specific instance, do you, sir?

19 A Not verbatim, the conversation, no.

20 Q I'm not asking you verbatim. I'm asking you if you  
21 remember saying that in this specific instance --

22 A I had a conversation with the woman.

23 MR. WEXLER: This is like well-tilled soil.

24 THE COURT: Mr. Miller, please let the attorney  
25 finish the question.

Miller - Cross/Nicolini

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1 Q So you had a conversation and you leave the service,  
2 correct?

3 A Yes.

4 Q And did she take it from you. Did you put it in the  
5 mailbox? Where did you leave the papers yourself?

6 A She did not take the papers. I left it there.

7 Q And that's all through the service?

8 A I've seen people rip them up in front of me.

9 Q If in fact Mrs. Woznick had not responded or if Mrs.  
10 Woznick told you that David did not live there, you would  
11 have to do additional legwork to figure out where he lived  
12 to effectuate service, fair enough, sir?

13 A No, I don't do that.

14 Q You would have had to come back and tell Mr. Wexler,  
15 what, you couldn't effectuate service?

16 A Well, yes.

17 Q And who would do the legwork then to determine where  
18 Mr. Woznick lived?

19 A Usually the attorney would do it or we perform the  
20 service.

21 We do offer that service, but I do not perform  
22 that service personally. But we do offer that service  
23 through the office.

24 I get paid regardless whether I serve the papers  
25 or not, so there is no benefit for me to make this up.

Miller - Redirect/Wexler

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1 MR. NICOLINI: I have no further questions.

2 THE COURT: Mr. Wexler.

3 REDIRECT-EXAMINATION

4 BY MR. WEXLER:

5 Q You were asked why you went to 269 Crombie,  
6 Mr. Miller?

7 A Yes.

8 Q Were you told by my office by me, that the 16 Albert  
9 was vacant? Do you remember having that conversation?

10 MR. NICOLINI: Objection, leading.

11 THE COURT: Sustained. Why don't you rephrase  
12 the question.

13 Q Do you remember having a conversation with my office,  
14 I think it was me, about why 269 Albert -- Crombie and not  
15 any other address?

16 269 Crombie and not 16 Albert?

17 A That was the address provided by your office.

18 Q Now, you were asked questions by Mr. Nicolini. What  
19 would have happened if Mrs. Woznick said, no, he does not  
20 live here. I don't know David or he does not live here.

21 What would you have done?

22 A I would return the papers to the office as a  
23 nonservice.

24 Q And you get paid the same, one way or the other?

25 A Yes.

Miller - Redirect/Wexler

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1 Q Now, you were asked a bunch of questions by  
2 Mr. Nicolini about your independent recollection. Your  
3 recollection is based on the affidavit of service?

4 A Yes.

5 Q And by the way, you also showed us another document.  
6 You called a GPS?

7 A Yes.

8 MR. WEXLER: May I approach?

9 THE COURT: That is not in evidence.

10 MR. WEXLER: No, but it will be.

11 Judge, may we have this document marked. Why  
12 don't we do it as 1-A.

13 THE COURT: Show it to Mr. Nicolini, or does he  
14 already have a copy.

15 MR. NICOLINI: I'm not disputing he was there.  
16 That's fine. I have no objection.

17 THE COURT: You call it 1-A.

18 MR. WEXLER: Yes.

19 THE COURT: 1-A in evidence. Admitted.

20 (Whereupon, Plaintiff Exhibit 1-A was received  
21 in evidence.)

22 Q And I think you testified, Mr. Miller, what 1-A is.  
23 But in a sentence or two, what is 1-A?

24 A That is a GPS printout.

25 Q What information is contained on that GPS printout?

Miller - Redirect/Wexler

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1 A The date and time that I was at a specific location.

2 Q And there are also a series of longitude, latitude  
3 degrees, minutes, seconds?

4 A I suppose that is what that is. I can't -- you know,  
5 a third party generates this.

6 Q Fair enough.

7 The affidavit of service, Plaintiff's Exhibit 1,  
8 when in relationship to the service that you made on  
9 December 8, 2015, did you complete this document?

10 A This was done contemporaneously with service.  
11 Moments after service was effectuated I uploaded the  
12 information through the app.

13 Q Am I going to guess correctly you went back to your  
14 car and uploaded it there?

15 A You have a smart phone. You take a picture, and then  
16 you type in the work order number and then you type in all  
17 the pertinent information.

18 THE COURT: The affidavit of service.

19 THE WITNESS: No, it establishes where I am with  
20 the phone through global positioning.

21 THE COURT: Got it.

22 THE WITNESS: So at that time I'm there pressing  
23 a button and, you know.

24 MR. WEXLER: Fair enough. One or two more  
25 questions which they escape me at the moment.



Miller - Redirect/Wexler

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1 Q Can you give us a time frame whether it is in  
2 seconds, minutes, something other, after leaving the  
3 process of service with Mrs. Woznick, you testified that  
4 she wouldn't accept it.

5 How much time thereafter did you input the  
6 information that is in the affidavit of service?

7 A Within a minute.

8 MR. WEXLER: Thank you. No further questions.

9 THE COURT: Anything further?

10 MR. NICOLINI: No, your Honor.

11 THE COURT: Thank you, Mr. Miller. You may step  
12 down.

13 Mr. Wexler, do you have other witnesses.

14 MR. WEXLER: Yes, I do.

15 At this time plaintiff will call Mr. James  
16 Koehler.

17 THE CLERK: Raise your right hand, please.

18 J A M E S K O E H L E R,

19 called as a witness, having been first  
20 duly sworn, was examined and testified  
21 as follows:

22 THE WITNESS: James Koehler. J-a-m-e-s  
23 k-o-e-h-l-e-r.

24

25

Koehler - Direct/Wexler

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1 DIRECT EXAMINATION

2 BY MR. WEXLER:

3 Q Mr. Koehler, tell us by whom you are employed?

4 A I'm self-employed. I own the South Bay Sailing  
5 Center and Marine shop. 334 South Bayview Avenue, in  
6 Amityville.

7 Q And what is the South Bay Sailing Center, Inc.?

8 A The South Bay Sailing Center, Inc., is a corporation  
9 that owns the property at 334 South Bayview, and at that  
10 site there are tenants that occupy that site, the dingy  
11 shop which is our store which is one of the occupants at  
12 that site, and there are others.

13 Q And what sorts of things go on at the dingy shop?

14 A Wonderful things go on in the dingy shop.

15 Q In addition to the wonderful things -- describe the  
16 wonderful things.

17 A We have a store and we sell sailboats, kayaks, paddle  
18 boards, related items, and we service those items and  
19 attend to our customers' needs.

20 We attend to youth sailing in a large way,  
21 performance and recreational sailing.

22 From this location it's a springboard for water  
23 sports enthusiasts to go out and enjoy the bay or the  
24 world.

25 Q All right. How long have you been associated with

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1 the dingy shop?

2 A The dingy shop was incorporated originally in 1992.

3 Q And when did you first start doing business out of  
4 334 South Bayview Avenue?

5 A 19 years ago.

6 Q Okay. And can you describe the location vis-a-vis  
7 the proximity to the water of the dingy shop?

8 A Technically we're at 334 South Bayview Avenue  
9 20 years as of Labor Day weekend. So actually 20 years  
10 there.

11 Q Okay. And how close is the water to you?

12 A The water is there. The Great South Bay is a short  
13 tack or paddle out in the woods from Ketcham's Creek.

14 Q Are you located on Ketcham's Creek?

15 A Ketcham's Creek or Woods Creek it's also known, and  
16 behind us is the South Bayview Canal.

17 Q And Ketchem is K-e-t-c-h-e-m?

18 A No, a-m.

19 Q Like the famous boat site?

20 A Yes.

21 Q I'll show you a document and I ask that this marked  
22 as Plaintiff's Exhibit 3.

23 THE COURT: Show it to counsel.

24 MR. NICOLINI: I have it.

25 THE COURT: Any objection?

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1 MR. WEXLER: No objection.

2 THE COURT: Plaintiff's Exhibit 3 in evidence.

3 (Whereupon, Plaintiff Exhibit 3 was received in  
4 evidence.)

5 MR. WEXLER: I'll give a copy to the Court,  
6 please.

7 Q I'm showing you what has been received in evidence as  
8 Plaintiff's Exhibit 3. Can you describe very briefly what  
9 this is a picture of?

10 A This is a map of the neighborhood.

11 Q Okay. And there is, I think they call it, a pin at  
12 334 South Bayview Avenue?

13 A Yes.

14 Q Now, that is where the South Shore Sailing Center and  
15 the dingy shop are located?

16 A Yes.

17 Q Okay. Now, I want you to tell us the body of water,  
18 the creek that it's on, is that Ketcham's Creek?

19 A Yes.

20 Q If you will go up several roads or canals from 334  
21 South Bayview, in fact if you will count north eight  
22 canals, is that Albert Road?

23 A Yes.

24 Q Over the last 20 years, specifically, since  
25 October 28th of 2015, have you had the occasion to go up

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1 and down Ketcham's Creek?

2 A Yes.

3 Q And were you swimming, were you boating, kayaking,  
4 sailing?

5 A I have swum in the creek. I typically kayak or  
6 occasionally have paddle boarded or sailed all the way up  
7 to Amity Harbor Marina which is the headwaters. It's a  
8 beautiful creek.

9 Q Since October 28, 2015, Superstorm Sandy, have you  
10 had occasion to go up and down that Ketcham's Creek as far  
11 as Albert Road? Have you had occasion to do that?

12 A Yes.

13 Q On how many occasions?

14 A Could be 100. I mean there's many nights I'll not go  
15 out. I don't want to go out on the bay because it is  
16 dangerous so I'll put a kayak in the water and I'll paddle  
17 up the creek and I'll shoot through the canals to get some  
18 exercise and I enjoy water. I work on the water so I try  
19 to get out as much as possible.

20 Q And you also do a fair amount of sailing?

21 A Yes.

22 Q You placed in the World's Sunfish Tournament?

23 A Yes.

24 Q In addition to working at the dingy shop for 20 years  
25 and being its proprietor, how long have you lived in

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1 Amityville?

2 A I was born at Brunswick Hospital. Amityville was  
3 always a place we came to. When my mom and dad were  
4 getting married they bought a house in Massapequa. I  
5 learned to swim at the village beach.

6 Q Are you familiar with the Amity Harbor area which is  
7 depicted in Plaintiff's Exhibit 3?

8 A Very well. I have several good friends that live  
9 down there and I have an uncle who used to live at the end  
10 of the western concourse, and I caught my first fish at  
11 the Amity Harbor canal.

12 Q Now, let's talk about Albert Road. Are you familiar  
13 with Albert Road?

14 A Not intimately, but I've been up and down the blocks  
15 there.

16 Q And I'm going to ask you, draw your attention to  
17 October 28, 2012, and was the dingy shop and the South  
18 Shore Sailing Center effected by what we call Superstorm  
19 Sandy?

20 A Grandly.

21 MR. WEXLER: Judge, may we have this photograph  
22 marked as Plaintiff's Exhibit 4?

23 THE COURT: Yes. Any objections?

24 MR. NICOLINI: Just on relevance, your Honor. I  
25 don't understand the relevance of the South Bay Sailing

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1 Center damage.

2 THE COURT: We'll mark it.

3 MR. WEXLER: If I may, I'm just going to offer  
4 it in evidence.

5 (Whereupon, Plaintiff Exhibit 4 was received in  
6 evidence.)

7 Q Mr. Koehler, I'll show you what has been received in  
8 evidence as Plaintiff's Exhibit 4, and I'll ask you if you  
9 recognize that and if you can tell us what that is. You  
10 hold it.

11 Thank you.

12 A It's the eastern facing boundary of our property, the  
13 area in front of the blue door in the center of the  
14 photograph is a paved driveway, and to the right of the  
15 photograph is a Sandy beach.

16 THE COURT: This is right after the storm?

17 THE WITNESS: Immediately after the storm, the  
18 next morning.

19 THE COURT: Okay.

20 Q Now, I'll ask you to take a look. There's a blue  
21 object, a blue structure right in the center of the  
22 picture. Yes?

23 A Yes.

24 Q And if you will take a close look and maybe I'll also  
25 show it to Mr. Nicolini and the Court because you need to

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1 be a little closer to it. There are two variants of blue  
2 on that structure. Can you point out where I'm talking  
3 about?

4 A There's a darker blue line below and a lighter  
5 oxidized blue line above it.

6 THE COURT: Why don't you show it to  
7 Mr. Nicolini as well.

8 MR. WEXLER: Would you point it out.

9 MR. NICOLINI: That's the waterline. Whatever.  
10 I know there has been a lot of damage. I live in  
11 Massepequa.

12 MR. WEXLER: It's not the damage, just --  
13 there's a particular reason.

14 If I can offer this picture up to the Court  
15 because you couldn't see it from back there.

16 THE COURT: I'll look at it. Thank you.

17 Q Would you explain to the Court what the light blue,  
18 as you call it, the oxidized blue and the dark blue?

19 A The water was deep. We were flooding, and the area,  
20 the darker blue line is where the oil-base painted steel  
21 doors were polished by the water and the debris in the  
22 water.

23 Q Did you have any occasion to measure how high the  
24 water was at least for that park?

25 A At that point it's about a head height.



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1 Q My head would be different from your head.

2 A Six-foot?

3 Q Okay. Now, I'll ask you to describe the area, what  
4 it looked like around Albert Road?

5 A I went out that time several times. There's a dear  
6 friend of ours, Jimmy Rancor who lives on Hayes further  
7 down. Jim was the only person who I was able to go down  
8 and volunteer and help.

9 On the way down there I would drive down and it  
10 is kind of an awkward thing. You are in a natural  
11 disaster area, but there was something about just seeing  
12 our neighbors and the homes and hoping that some were okay  
13 and hoping some were okay --

14 Q Did you have occasion to notice on those streets as  
15 far up north as Merrick Road, how high the water was?

16 A You could tell all the houses as far as I know, all  
17 the houses were flooded.

18 Q Now, let me ask you, you have that photograph in your  
19 hand, you will see there is oddly enough there is a  
20 27-foot boat sitting on it's stomach on your property.

21 Do you know whose boat it is?

22 A That's how David and I got to know each other and  
23 we'll continue to know each other as neighbors.

24 Q Did there come a time that Mr. Woznick, I think I'm  
25 pronouncing your name correctly.

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1 MR. WEXLER: How do you pronounce your name?

2 MR. WOZNICK: Woznick.

3 MR. WEXLER: Thank you.

4 Q Did there come a time that you had a conversation or  
5 conversations with Mr. Woznick?

6 A Yes.

7 Q How many times did you have, Mr. Koehler?

8 A At least two, perhaps three.

9 Q Can you tell us about those conversations. Were they  
10 particularly long conversations?

11 A Neither of us are overspoken.

12 Q Tell us about the first one that you recall?

13 A The first conversation I had, after -- probably it  
14 took us about two weeks to be able to sort out that,  
15 because we looked and you couldn't find the registration  
16 numbers on the boat because the boat has a reflex sheer,  
17 so the top of the boat comes in like that, and since it's  
18 on its edge you couldn't read any numbers.

19 When we finally could, because we were busy  
20 trying to secure our building, every perimeter wall in our  
21 shop was gone. Although I had this cabin cruiser on my  
22 property, it was more important for us to be able to  
23 secure our property from looting. But as time went by I  
24 got a ladder, jumped on it, wrote the registration numbers  
25 down, and since I'm in the Village of Amityville, called

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1 the Amity village police, I think it was Officer Smith, he  
2 came down and took a report, and a few days later Dave  
3 came over.

4 Q When Mr. Woznick came over, did you have a discuss  
5 with him?

6 A We said hello. David said it was his boat. He said  
7 that it was -- we knew it had been on the property, mom's  
8 property --

9 MR. WEXLER: Just listen to me. Stay with me.

10 THE WITNESS: I'll stay with you.

11 A -- So David came by. He confirmed that it was his  
12 boat. He said it was insured.

13 Q Okay.

14 A He said that prior to the storm he had been taking  
15 items from the house up to Huntington, that he didn't do  
16 anything with the boat prior to Sandy because it was fine  
17 during Irene and so I didn't do anything.

18 Q And did you know what he meant when he said he was  
19 taking -- I'm sorry, I didn't catch it. So I'll let you  
20 --

21 A He was taking things from the house up to Huntington  
22 because people were coming from the Great South Bay and  
23 looting houses along the shore.

24 Q So in fact he testified that was one of your concerns  
25 was about looting?

**Koehler - Cross/Nicolini**

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1 A That was all of our concerns. We were trying to save  
2 ourselves.

3 David said the boat was insured and that he  
4 asked me if we found the upholstery because it has been  
5 recently upholstered. At that point I said we both have a  
6 lot to resolve.

7 MR. WEXLER: Thank you.

8 THE WITNESS: And I didn't comment on the  
9 upholsteries, but we had found the upholstery which was  
10 separated from the body.

11 THE COURT: Mr. Nicolini.

12 MR. NICOLINI: Mr. Koehler, how are you.

13 CROSS-EXAMINATION

14 BY MR. NICOLINI:

15 Q There is no doubt there was flooding throughout this  
16 area, including the boat and the surrounding area?

17 A Yes.

18 Q 16 Albert Road where Mr. Woznick resided, have you  
19 ever been to that location?

20 A Not to 16. I never visited David. I'm getting to  
21 know the family well because he has a great brother and a  
22 great nephew.

23 Q But the house itself, you don't know his house as  
24 opposed to any other house. You don't know that house  
25 among others?

Koehler - Cross/Nicolini

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1 A I don't know that area intimately. I've been up and  
2 down.

3 Q You take a kayak and you do a lot of things in the  
4 area and you noticed a lot of damage to the area, correct?

5 A Yes.

6 Q You don't know which houses people continue to live  
7 in and which houses were vacant at the time; is that  
8 right, sir?

9 A I can't see if there are people -- there are still  
10 people who are gone from their houses.

11 Q I know that too well.

12 A I haven't knocked on every house to see whether they  
13 are occupied or not.

14 Q With David, you don't have any knowledge whether he  
15 resided after 16 Albert one way or the other, do you?

16 A One way or the other, I couldn't say whether David  
17 moved or not. I do know that the houses in our area were  
18 not habitable. They were in bad shape. People sought  
19 refuge elsewhere.

20 Q And some people stayed, correct?

21 A I don't know of anyone who really stayed until they  
22 got their places back in order.

23 I live on Avon Place and we had no electricity,  
24 and just to go to our house after being wet all day was  
25 like living in a cave. It was rough.

Koehler - Cross/Nicolini

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1 Q You heard David testify under oath today?

2 A Yes.

3 Q And you heard what he did and the steps he did that  
4 he and Dorothy continued to reside there. Are you saying  
5 that he lied about that?

6 MR. WEXLER: Objection.

7 THE COURT: Sustained.

8 Slow down, and ask a question.

9 Q Do you have any knowledge to refute David's testimony  
10 that he and Dorothy continued to reside in the property  
11 despite the fact that the basement of the property had  
12 been flooded?

13 MR. WEXLER: Judge, I don't think it is proper  
14 to have a witness characterize another witness' testimony.

15 THE COURT: That wasn't the question.

16 Q Did you have any knowledge to contradict what David  
17 testified under oath that he and Dorothy continued to  
18 reside --

19 A I have no knowledge to contradict David.

20 Q The police responded to the scene, correct?

21 Did they respond at some point?

22 A Yes.

23 Q Okay. And the police officer, I think it was  
24 responding Officer Miller?

25 A Okay.

Koehler - Cross/Nicolini

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1 Q Had you seen the police report?

2 A Yes.

3 Q Are you familiar with the address contained in the  
4 police report as it pertains to David Woznick?

5 A The purpose of the police report was to have a record  
6 that I have a boat on my property and to find out whose it  
7 was to be removed.

8 Q Are you familiar with the address contained therein?

9 A No.

10 Q The address of 7 -- 269 Crombie Street, Huntington  
11 Station, did you ever provide that to Mr. Wexler?

12 A No.

13 MR. NICOLINI: I have no further questions.

14 Thank you, sir.

15 THE COURT: Mr. Wexler.

16 MR. WEXLER: Nothing, your Honor.

17 THE COURT: You may step down. Thank you.

18 (Witness excused.)

19 THE COURT: Any other witnesses?

20 MR. WEXLER: No, your Honor.

21 THE COURT: Mr. Nicolini, how do you want to  
22 handle this?

23 MR. NICOLINI: Your Honor, I would like to call  
24 Mary Jane Woznick. David's mom.

25 THE COURT: Sure.

**Mary Jane Woznick - Direct/Nicolini**

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1 Do you want five minutes, or no?

2 MR. NICOLINI: I'm okay, Judge. I can get her,  
3 bring her in.

4 THE CLERK: Please raise your right hand.

5 **M A R Y J A N E W O Z N I C K,**

6 called as a witness, having been first  
7 duly sworn, was examined and testified  
8 as follows:

9 THE CLERK: Please state your name and spell it  
10 fully for the record.

11 THE WITNESS: My name is Mary Jane Woznick. The  
12 spelling of the last name is W-o-z-n-i-c-k.

13 THE COURT: Mr. Nicolini.

14 DIRECT EXAMINATION

15 BY MR. NICOLINI:

16 Q Mrs. Woznick, 269 Crombie Street in Huntington  
17 Station, do you own that property?

18 A Yes.

19 Q Did you own it originally with your husband?

20 A Yes.

21 Q Had your husband passed away?

22 A Yes.

23 Q When did he pass away?

24 A I'm sorry?

25 Q When did he pass away?



Mary Jane Woznick - Direct/Nicolini

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1 A March 21, 2015.

2 Q Okay. So back in January of 2015, did you reside at  
3 the Crombie Street address with your husband?

4 A Yes.

5 Q Did anyone else live at your property besides you and  
6 your husband at that point?

7 A In 2015?

8 Q I'm sorry, I made a mistake. Your husband passed in  
9 March of 2015.

10 A Right.

11 Q So in December of 2015, were you living in the  
12 property by yourself or with anyone else?

13 A In December I was living there alone.

14 Q Okay. Let's talk about your son David. Did he grow  
15 up in the home?

16 A David didn't live in my house.

17 THE WITNESS: I'm sorry, but I can't hear  
18 everything you are saying.

19 THE COURT: You can also use the microphone.

20 MR. NICOLINI: Judge, you're right. That would  
21 help.

22 Q Ms. Woznick, is this better?

23 A Yes.

24 Q Great. Did David grow up in the home?

25 A Yes.

Mary Jane Woznick - Direct/Nicolini

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1 Q And he lived there until approximately when, what  
2 year?

3 A 1986, my youngest daughter was going to be getting  
4 married and we were making an apartment for her on the  
5 second floor. So we were taking over two bedrooms, and  
6 the kids went to the house in Amity Harbor, 5 Kay Road,  
7 and they stayed there with the idea that they were going  
8 to move back, but they never did.

9 Q Okay. Now, so David moved to 5 Kay Road?

10 A Yes.

11 Q And where did he live after 5 Kay Road, if anywhere  
12 else?

13 A He was getting married and they were living, I  
14 believe, it was Dottie's dad in his house in Levittown.  
15 Then they bought the house on Albert Road.

16 Q Is that 16 Albert Road?

17 A Yes.

18 Q And Dorothy is David's wife?

19 A Yes.

20 Q When did David and Dorothy purchase the 16 Albert  
21 home? When was that approximately?

22 A I don't recall the exact time, but they got married  
23 in the '90s and maybe about a year or so after. I went to  
24 visit a friend of mine that used to live on that street  
25 and I'm passing that house, I saw a for sale sign in the

Mary Jane Woznick - Direct/Nicolini

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1 window and I stopped the car and I asked them if they were  
2 interested in a buyer because I knew my son would like to  
3 be there.

4 Q And then your son and Dorothy bought the house?

5 A They went there and bought the house from that man.

6 Q Mrs. Woznick, from the time David moved out of 269  
7 Crombie in about '86 up until today, has he ever moved  
8 back in?

9 A Never, no.

10 Q Let's talk about Hurricane Sandy. You recall that  
11 event?

12 A Yes.

13 Q That would be around Halloween of 2012?

14 A Yes, it was. I don't remember the exact day, but it  
15 was October, I think it was October 20-something, maybe  
16 the 20th, somewhere around then of 2012.

17 Q To your knowledge, did David and Dorothy's house at  
18 16 Albert Road sustain damage?

19 A Yes, it did.

20 Q Did they move out of that home, to your knowledge, at  
21 all after Sandy?

22 A No, no. When they had to evacuate, he had brought,  
23 as did many people from the Harbor, brought their cars on  
24 the other side of Merrick Road to the parking lot of a big  
25 store that was there, and it since changed hands. It

Mary Jane Woznick - Direct/Nicolini

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1 became a hardware, or something.

2 They spent the night literally in their car.

3 Q What about thereafter? Did they move out of their  
4 home or they stayed there? Never moved out? They went  
5 back to the house? As a matter of fact, the night that  
6 the storm was hitting, he was down the basement, because  
7 they have a basement, they are close to Merrick Road, and  
8 he was down there trying to secure the windows?

9 MR. WEXLER: Your Honor, I'm going to object  
10 unless this witness has personal knowledge of any of this.

11 THE COURT: How did you find out about this.

12 THE WITNESS: Because they told me about it  
13 because he came so close to losing his life down there  
14 because the wave came while he was down in the basement  
15 and it broke through the window and he had to make it up  
16 the stairs before the flood filled up the basement.

17 THE COURT: He told you that that happened. How  
18 soon after it happened did he tell you about it?

19 THE WITNESS: Pardon?

20 THE COURT: How soon after.

21 THE WITNESS: Dottie was very upset about it.  
22 The very next day.

23 THE COURT: Okay.

24 THE WITNESS: Because I was in touch with all my  
25 children then.

Mary Jane Woznick - Direct/Nicolini

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1 Q Mrs. Woznick, did David and Dorothy ever move back in  
2 with you following Sandy?

3 A No, because 5 Kay Road is a house that I owned and my  
4 daughter Claudia was living there with her husband Michael  
5 Covell and their two cats. And they had to be moved out  
6 of there because that's right on the bay.

7 Q So did they move in with you?

8 A And they came to my house.

9 Q Did David and Dorothy move in with you after Sandy or  
10 stayed on Albert Road?

11 A Stayed on Albert Road. Nowhere else.

12 Q Do you recall a man coming to your home at some point  
13 and leaving papers for David?

14 A Yes.

15 Q So let's talk about that. A man came to the home.

16 Tell me, did you have a conversation with him?

17 A Yes, at the door.

18 Q And was that -- was this a glass door, an open door,  
19 or something else?

20 A Yes. I have a storm door and the inside door. And  
21 this happened after my husband had passed, and everybody  
22 reprimanded me, do not open the door, you are by yourself.  
23 Anybody can overtake you easily. So, the door was always  
24 locked.

25 Q This was a glass door?

Mary Jane Woznick - Direct/Nicolini

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1 A The storm door was locked.

2 Q Let's talk about the conversation that you had with  
3 that gentleman. Do you recall that conversation?

4 A Yes.

5 Q Tell me what he said to you and what you said to him?

6 A Word-for-word, I cannot. Verbatim I can't.

7 Basically he was telling me he had papers for David  
8 Woznick.

9 I said David doesn't live here, and he said but  
10 I have to give him these papers.

11 I said, well, he doesn't live here. He lived in  
12 Amityville. For the love of money I couldn't remember the  
13 name of the street at that particular time. I was upset,  
14 I guess, I don't know.

15 I just said, if you are looking for him and you  
16 have papers for him, you should have his address. Don't  
17 you have his address?

18 He said, I have this address.

19 I said, he doesn't live here. He hasn't lived  
20 here in years. I said you have to go to the Amityville  
21 address. I said if you look it up you will find the  
22 address. It's one block south of Merrick Road, but I  
23 don't remember the name of the road.

24 Q What happened after that?

25 A Well, he said that I should open the door for him so

## Mary Jane Woznick - Direct/Nicolini

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1 that he could hand me the papers. And I said no, I'm not  
2 opening the door for anybody. I don't know you. You can  
3 tell me you are anybody.

4 Well, I have a car here.

5 I said, I can't read the card through here. I'm  
6 sorry, I'm not opening the door.

7 He said, I'll leave them here and he put them in  
8 front of the doorway and he turned around, walked down a  
9 couple steps and he said you will have to pick them up  
10 yourself.

11 I said, I'm not opening the door, I'm sorry. I  
12 closed the door and he left.

13 It was daylight and my mail comes between four  
14 and 4:30. After I heard the mailman, I went out there to  
15 take the mail that is right next to the door. I opened  
16 the door and I just have to reach in and I saw the papers  
17 on the floor there. I looked around, I didn't see anybody  
18 out there. I picked up the paper and I brought it in the  
19 house. I read what was written on there and I called up  
20 my daughter-in-law and I told her that the man left this  
21 paper here and it's a legal document. I said the only  
22 thing I can do is I can mail it to you. So that's what I  
23 did.

24 MR. NICOLINI: Okay. I have no further  
25 questions.

Mary Jane Woznick - Cross/Wexler

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1 THE COURT: I have a question, quickly. When  
2 you said there was a conversation with the process server,  
3 your inside door was open and you can see him through the  
4 glass.

5 THE WITNESS: Yes.

6 THE COURT: And the door remained locked.

7 THE WITNESS: Yes.

8 THE COURT: Mr. Wexler.

9 CROSS-EXAMINATION

10 BY MR. WEXLER:

11 Q Good afternoon, Mrs. Woznick.

12 Do you remember being served with legal papers  
13 by the process server?

14 A What he left on the doorstep.

15 Q You remember a gentleman there in December of 2015  
16 knocking on the door, whoever it was?

17 A I don't remember the date.

18 Q It doesn't matter. Do you remember a gentleman who  
19 did you not know knocking on the door?

20 A (No response.)

21 THE COURT: You have to respond.

22 THE WITNESS: He rang the doorbell, yes.

23 Q And you had a conversation with him, yes?

24 A Yes.

25 Q And your son's name was mentioned, David Woznick.



Mary Jane Woznick - Cross/Wexler

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1 That is your son?

2 A He wanted to give these papers to David.

3 Q Okay. Now, how often do you speak to your son or  
4 were you speaking to your son in December of last year.  
5 How often?

6 A I would say probably, the kids pretty much call me at  
7 least once a week to make sure I'm okay.

8 Q And is it fair to say that David Woznick, your son,  
9 has called you at least once a week since December up  
10 until this week?

11 A Yeah.

12 Q So when you got these papers, however you got them, I  
13 think you said you went out and picked them up when the  
14 mailman came or after he came, did you pick up the phone  
15 and say David, just did you do it --

16 A I called his house.

17 Q I'm not finished. Okay.

18 And did you speak to him?

19 A No, I spoke to his wife, Dottie.

20 Q And you spoke to his wife?

21 A Right.

22 Q But wasn't his phone disconnected?

23 A I used the cell phone. He has a cell phone and she  
24 has one.

25 Q But the home phone was disconnected?

Mary Jane Woznick - Cross/Wexler

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1 A I don't know. Usually I call him on a cell phone.

2 Q So your testimony is that you called his wife Dottie?

3 A I spoke to Dottie because she was home and answered  
4 the phone.

5 Q Okay. And you said I have these legal papers. I  
6 don't know what they are about. But you said something to  
7 the effect that I want David to have them?

8 A Right.

9 Q And you are saying that you sent them to him?

10 A Yes, I sent them to her in the mail.

11 Q Well, the next week, if your son spoke to you roughly  
12 weekly, did you say, oh, did you get those papers or what  
13 was that all about?

14 Did you have a discussion, however brief, about  
15 the papers you claimed to send to him? I'm asking if you  
16 had a discussion?

17 A We had very little discussion because when I spoke to  
18 Dottie --

19 Q I'm asking --

20 A Let me explain why.

21 MR. WEXLER: -- Let me ask the questions and  
22 trust me you'll have a chance to explain.

23 Let me get through these questions. And ma'am,  
24 if you can't answer them, just say I can't answer them.

25 THE WITNESS: Okay.

Mary Jane Woznick - Cross/Wexler

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1 Q Did you have a discussion within the next week, just  
2 yes or no, with your son?

3 A With my son, I would say I don't recall talking about  
4 it with him.

5 Q Okay. The following week?

6 A I don't.

7 Q The following week after that?

8 A No.

9 Q All right. You told his wife, is what you are  
10 testifying?

11 A I told her and I mailed the papers to them.

12 Q Well, the next week or whenever the next time you  
13 spoke to your daughter-in-law, did you say, oh, did you  
14 get those papers? What is it about?

15 A Don't worry about it, mom, we have the insurance  
16 company. We'll give it to the insurance company.

17 Q So they acknowledged the receipt?

18 A They got them. They are giving them to the insurance  
19 company.

20 Q Now, let me ask you, you testified that you've been  
21 to 16 Albert Road?

22 A I'm sorry.

23 Q You have been to 16 Albert Road?

24 A Yes.

25 Q And 16 Albert Road is on the water, in Amityville, in

Mary Jane Woznick - Cross/Wexler

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1 Amity Harbor?

2 A It's on a canal.

3 Q Well, that's on the water, isn't it?

4 A Yes.

5 Q And how much after Superstorm Sandy did you get to  
6 see the house? A week, a month, a year, never, or  
7 something in between?

8 A My daughter who was living at 5 Kay Road, Amity  
9 Harbor, came to live with me the night that Sandy hit.

10 Q Ma'am --

11 A I'm answering you.

12 Q No, you are not.

13 A And we all went there when the storm was over.

14 MR. WEXLER: All right. Go ahead. I'm sorry.

15 THE WITNESS: I don't know the date that the  
16 storm was over. You are asking me for a date. I can't  
17 give it to you.

18 When they said that the storm was over, we can  
19 go back in there, three days, four days, whenever it was,  
20 we went back there.

21 Q That's all I asked. How long after the storm?

22 A I can't give you an exact date.

23 Q I'm not asking you for that. Three days, five days,  
24 a month, a year, a decade?

25 A Within the week we went back.

Mary Jane Woznick - Cross/Wexler

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1 Q Okay. And when you went back, what did you observe?

2 A We went back to 5 Kay Road because that was the house  
3 that I owned and that house was right on the bay.

4 Q What about 16 Albert Road. Did you go back there?

5 A We stopped at the house, 16 Albert Road, on our way  
6 out of the harbor, but not for any length of time. We did  
7 not go in the house because they weren't in the house that  
8 day when we went there.

9 Q In fact there was a mandatory evacuation of that  
10 whole area in Amity Harbor --

11 A But --

12 MR. WEXLER: Hang on, ma'am.

13 Q Didn't you testify on direct for Mr. Nicolini, those  
14 were your words, there was a mandatory evacuation?

15 A Everybody had to get out.

16 Q You were telling us how a wave crashed through the  
17 window of David's house and he almost lost his life?

18 A Right.

19 Q That was the destructive nature of Superstorm Sandy  
20 in the Amity Harbor area?

21 A Right.

22 Q Especially those homes right on the water?

23 A Yes.

24 Q They crashed through walls, windows, almost killed  
25 people?

Mary Jane Woznick - Cross/Wexler

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1 A Right.

2 Q Did --

3 MR. WEXLER: No further questions. Thank you,  
4 Judge.

5 THE COURT: Mr. Nicolini.

6 MR. NICOLINI: Nothing further, your Honor.

7 THE COURT: You may step from the bench.

8 THE WITNESS: Thank you.

9 (Witness excused).

10 MR. NICOLINI: I have one last witness. Dorothy  
11 Woznick.

12 THE CLERK: I'll just ask you to raise your  
13 right hand.

14 **D O R O T H Y W O Z N I C K,**

15 called as a witness, having been first  
16 duly sworn, was examined and testified  
17 as follows:

18 THE CLERK: Please state your name for the  
19 record.

20 THE WITNESS: Dorothy Ann Woznick.

21 Do you want me to spell it? D-o-r-o-t-h-y.  
22 A-n-n. W-o-z-n-i-c-k.

23 THE COURT: Please have a seat.

24 THE WITNESS: Thank you.

25

**Dorothy Ann Woznick - Direct/Nicolini**

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1 DIRECT EXAMINATION

2 BY MR. NICOLINI:

3 Q Mrs. Woznick, are you married to David Woznick?

4 A Yes, I am.

5 Q Were you married in 1994?

6 A 1993.

7 Q Okay. Now, did you currently own 16 Albert Road in  
8 Amity Harbor?

9 A Yes.

10 Q Is that a single family home?

11 A Yes.

12 Q Do you own it jointly with David?

13 A Yes.

14 Q How long have you owned it for?

15 A September 20th will be 22 years.

16 Q Okay. Now, has David continually resided with you at  
17 that property from the time it was purchased up until the  
18 present time?

19 A Oh, yes.

20 Q To your knowledge, 269 Crombie Street is that where  
21 David grew up and his mother still lives?

22 A Yes.

23 Q Has David ever moved back into that property from  
24 1993 up to the present?

25 A No.

**Dorothy Ann Woznick - Direct/Nicolini**

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1 Q Let's talk about Hurricane Sandy. As a result of  
2 that storm, did the area in general and your house  
3 specifically sustain damage?

4 A Yes.

5 Q What kind of damage did your house sustain as a  
6 result of Sandy?

7 A We had six and a half feet of water I believe in our  
8 basement and everything that ran the home, i.e., the  
9 plumbing, electric, the heating, hot water heater,  
10 etcetera, were destroyed due to the water.

11 Q Let's talk about and, I believe, Mr. Wexler will be  
12 asking you questions, questions whether you and David  
13 continue to reside at 16 Albert Road after Sandy. What is  
14 the answer to that question?

15 Did you or did you not?

16 A Oh, we stayed in the home.

17 Q Take us through that. You don't have to go through  
18 every specific. How was it that you were able to stay?  
19 What were the living conditions like and why didn't you  
20 leave?

21 A I kidded my husband. I was living like an Amish  
22 woman.

23 (Fire alarm sounds.)

24 THE COURT: One second. All right.

25 Please don't talk about the testimony with



**Dorothy Ann Woznick - Direct/Nicolini**

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1 Mr. Nicolini. You must step out.

2 (Whereupon, a recess was taken.)

3 THE COURT: Okay. That was exciting. Back to  
4 where we were.

5 You are still under oath.

6 MR. NICOLINI: I'll withdraw the last question  
7 which I think was open.

8 THE COURT: Let's start again.

9 MR. NICOLINI: All right.

10 Q Ms. Woznick, could you just describe for us how it  
11 was that you continued to reside at 16 Albert Road after  
12 the storm?

13 A Sure. My husband and I waited for the last of the  
14 major high tides to end and then we pumped out the  
15 basement and then with help from friends and family, we  
16 have a power washer so we totally power washed and  
17 bleached the basement. My husband hooked up our Honda  
18 generator.

19 I don't know what the name of this thing is,  
20 it's an insert that goes inside your fireplace and you can  
21 burn coal and heat your home with that which we did.

22 For a time gas was shut off by the gas company.  
23 So we are campers and boaters, so we have Coleman propane  
24 stoves. We were cooking with the barbecue, and once the  
25 gas was put on we were able to use the gas again.

**Dorothy Ann Woznick - Direct/Nicolini**

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1           We had temporary electric put in the home,  
2   60 amp service which we still have which New York Rising  
3   told us to use.

4   Q    The flood, did it go above the basement level in the  
5   home?

6   A    Hit the beam but didn't come into the actual home.  
7   It pretty much stayed in the basement.

8   Q    Did you continue to live there throughout?

9   A    Absolutely.

10   Q   Did any of your neighbors stay?

11   A    Our next door neighbor stayed, Hang and Pat. They  
12   have a high-rise, split level type of home so they were  
13   okay to stay. Everybody else had four, four and a half.  
14   My neighbor across the street was away. He had six and a  
15   half feet. It was up his walls.

16           MR. NICOLINI: I have no further questions.

17           THE COURT: All right. Mr. Wexler?

18           MR. WEXLER: Nothing further. Rather, nothing.  
19   I'm sorry.

20           THE COURT: You may step down.

21           Anybody else wish to call witnesses?

22           MR. WEXLER: No, your Honor.

23           MR. NICOLINI: No, your Honor.

24           THE COURT: Everybody rests.

25           What do you want to do? We'll need to get the

1 transcript and I'll give you a post hearing submission.

2 You can do it in a letter if you want.

3 MR. NICOLINI: Okay.

4 MR. WEXLER: Both stipulated 30 days.

5 THE COURT: From the two weeks.

6 MR. WEXLER: Yes.

7 THE COURT: Let's figure out when that is.

8 Make it November 2nd.

9 MR. WEXLER: Okay.

10 MR. NICOLINI: Your Honor, could it be in letter  
11 form?

12 THE COURT: Five pages, single space. I think  
13 that would be adequate.

14 If you have any particular cases about this  
15 particular circumstance, that would be helpful.

16 MR. WEXLER: Very good.

17 MR. NICOLINI: Thank you.

18 MR. WEXLER: May we take our evidence or do you  
19 need it?

20 THE COURT: I don't need the picture. I think  
21 the transcript will do justice. The other original  
22 Exhibits I would like to keep. The driver's license, or  
23 if you have the affidavit of service.

24 (Proceedings concluded.)

25

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